

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TIFFAINY BURKHARDT and	:	
MARK BURKHARDT, h/w	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 98-2911
	:	
CONTEMPORARY SERVICES CORP.	:	
Defendant.	:	

MEMORANDUM-ORDER

GREEN, S.J.

August , 1998

Presently before the court is Plaintiffs' Motion for Remand, Defendant's Answer, and Plaintiffs' Reply. On April 30, 1998, Plaintiffs commenced this action in the Philadelphia County Court of Common Pleas seeking punitive and compensatory damages in excess of \$50,000 for injuries allegedly sustained by Tiffainy Burkhardt as a result of the actions of Defendant's employee. In a separate count, Plaintiff Mark Burkhardt alleges loss of consortium and also seeks separate damages in an amount in excess of \$50,000. On or about June 4, 1998, Defendant removed this action to this court pursuant to 28 U.S.C. § 1441. Plaintiffs' instant motion asserts that this court does not have jurisdiction because the amount in controversy requirement has not been met. (Pls.' Mem. Supp. M. for Remand at 1). Defendant alleges that the amount in controversy requirement has been satisfied because when the claims of both plaintiffs are aggregated, the amount in controversy exceeds the jurisdictional amount of \$75,000. (Def.'s Answer at 2-3). In addition, Defendant argues that if Plaintiff Tiffainy Burkhardt's punitive damages are considered in determining the amount in controversy, the punitive damages will total at least \$25,000 and Plaintiffs' claims will, therefore, exceed the \$75,000 amount in controversy requirement. Id. at 3. For the following reasons, Plaintiffs'

Motion for Remand will be granted.

DISCUSSION

Pursuant to 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district or division embracing the place where the action is pending.” 28 U.S.C. § 1441(a). District courts have original jurisdiction over matters where there is complete diversity between parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28 U.S.C. § 1332(a). This court must determine whether the amount in controversy requirement has properly been met by including punitive damages or by aggregating Plaintiffs' separate claims.

Defendant, as the removing party invoking federal court jurisdiction, bears the burden of demonstrating that the amount in controversy requirement has been satisfied. See Neff v. General Motors Corp., 163 F.R.D. 478, 481 (E.D. Pa. 1995). Where a case is instituted in a state court and then removed, there is a strong presumption that the plaintiff has not claimed a large amount in order to confer jurisdiction on a federal court. St. Paul, 303 U.S. at 290. Because lack of jurisdiction would void any judgment and the continuation of the litigation in federal court would be futile, the removal statute should be strictly construed and all doubts should be resolved in favor of remand. Abels v. State Farm Fire & Cas. Co., 770 F.2d 26, 29 (3d Cir. 1985).

Courts have imposed three different burdens on removing defendants that require them to show that the amount in controversy is greater than the jurisdictional amount. The Supreme Court has applied the strictest standard which requires plaintiff's prayer for relief to control, unless the removing defendant proves "to a legal certainty" that the plaintiff's claims are not less

than the amount in controversy requirement. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). Some courts have adopted the “preponderance of evidence” standard which requires the defendant to prove more likely than not that the plaintiff’s claims meet the amount in controversy requirement. Neff, 163 F.R.D. at 481. Finally, some courts have adopted the “reasonable probability” standard by which the defendant must show that there is a probability that the jurisdictional amount requirement has been met. Id. at 481-82. The Third Circuit has not delineated which burden applies and different standards have been applied in district court cases. Id.

A. Aggregation of Claims of Multiple Plaintiffs to Satisfy the Jurisdictional Amount

The separate and distinct claims of two or more plaintiffs may not be aggregated to satisfy the jurisdictional amount, even though the claims may arise from the same transaction. Zahn v. Int’l. Paper Co., 414 U.S. 291, 294-95 (1973). Federal courts have repeatedly treated one spouse’s loss of consortium claim as separate and distinct from the claim of the spouse suffering physical injury. See Reason v. General Motors Corp., 896 F. Supp. 829, 834 (S.D. Ind. 1995); see also Hymer v. Chai, 407 F.2d 136, 137-38 (9th Cir. 1969); Deutsch v. Hewes Street Realty Corp., 359 F.2d 96, 98 n.1 (2d Cir. 1966). Thus, if neither spouses’ claims satisfy the jurisdictional amount, district courts do not have jurisdiction to hear the claims. See 28 U.S.C. § 1332. In the present case, Plaintiffs’ claims are separate and distinct and, therefore, may not be aggregated in determining the amount in controversy requirement for diversity jurisdiction. See Zahn, 414 U.S. at 294-95; Reason, 896 F. Supp. at 834.

B. Inclusion of Punitive Damages to Satisfy Jurisdictional Amount

Although the Third Circuit has not specified a standard of burden, Defendant has not

produced any evidence to satisfy any of the three possible burdens. See Neff, 163 F.R.D. at 482. Defendant alleges that the requisite jurisdictional amount would be satisfied if punitive damages were considered in the analysis. (Def.'s Answer at 3). The court must consider claims for both actual and punitive damages stated in the Complaint in determining the amount in controversy. Bell v. Preferred Life Assurance Soc., 320 U.S. 238, 240 (1942). Defendant, however, has not provided any evidence, such as an affidavit of an expert witness, on how much the punitive damages may amount to on either claim to support Defendant's allegation that inclusion of a prayer for punitive damages satisfies the jurisdictional amount. In its Answer to the pending motion, Defendant has merely relied on the allegations of the Plaintiffs' Complaint which state that Plaintiff Tiffainy Burkhardt has suffered "a fracture of her right lower extremity", "a severe loss of her earnings capacity" and to have spent "large sums of money for her medical care and treatment." (Compl. ¶¶ 13-15). In addition, Defendant fails to go into detail about Plaintiff Mark Burkhardt's loss of consortium claim. Therefore, although Defendant may have established that there is a possibility that the jurisdictional amount in controversy may be satisfied, it has not even satisfied the most lenient "reasonable probability" standard.

Thus, because Defendant has not carried its burden in proving that the amount in controversy requirement has been met and because Plaintiffs' claims may not be aggregated in order to achieve the required amount, this court does not have jurisdiction to hear the present case. As a result, Plaintiffs' Motion to Remand will be granted.

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CONTEMPORARY SERVICES CORP.	:	
Defendant.	:	

ORDER

AND NOW, this day of August, 1998 upon consideration of Plaintiffs' Motion for Remand, Defendant's Answer, and Plaintiffs' Reply, IT IS HEREBY ORDERED that Plaintiffs' Motion is GRANTED and the Clerk of Court is directed to remand this case back to the Court of Common Pleas from which it was removed.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.